

COUNTY OF SAN BERNARDINO DBE PROGRAM

I. Definitions of Terms

The terms used in this Program have the meanings defined in Title 49 CFR §26.5. The authority is County Policy 15-02.

II. Objectives /Policy Statement (§§26.1, 26.23)

Disadvantaged Business Enterprise (DBE) programs generally establish goals and objectives to increase the number of contracts awarded to DBE businesses to obtain the fullest possible participation of Minority and Women owned businesses in local federal-aid contracts.

The County of San Bernardino has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26; *“Participation by Disadvantaged Business Enterprise Regulations in Department of Transportation Financial Assistance Programs”*. The County of San Bernardino receives Federal financial assistance from the DOT, and as a condition of receiving this assistance, the County of San Bernardino will sign an assurance that it will comply with 49 CFR Part 26; Title VI of the Civil Rights Act of 1964; and Section 30 of the Airport and Airway Development Act of 1970, as amended, and County Policy 15-02, as amended, provides for establishment of the County’s Standard Operating Procedures under these legislative mandates.

Each local agency must implement a Disadvantaged Business Enterprise (DBE) Program and establish an annual DBE plan/goal prior to submitting a "Request for Authorization" to proceed with a federal-aid project.

Chapter 9, "Civil Rights and Disadvantaged Business Enterprises" of CalTrans Local Assistance Procedures Manual shall be followed for implementation of the local DBE Program.

It is the policy of the County of San Bernardino to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable laws;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers impacting the participation of DBEs in DOT-assisted contracts;
- and

- To assist in the development of DBEs firms to enable them to compete successfully in the market place outside the DBE Program.

In like manner, when the Purchasing Agent solicits requests for proposals or price quotations from at least three (3) companies or firms, to the extent possible, one (1) shall be a registered DBE which has the technical competence or production capacity or is otherwise able to provide the items at reasonable, competitive prices in a timely manner.

Further, County departments involved in procurement of private consultants/firms shall comply with County Policy No. 11-05 (and the accompanying 11-05SP). Affirmative steps shall be taken to assure DBE participation consistent with Policy 15-02, as amended, and this Procedures Manual.

This policy shall apply to all agreements, contracts and purchase orders for public works, equipment, material, or professional services from firms or individuals engaged in “for profit” business activities paid in whole or in part out of federal or state funds when required by those funding services.

To the extent of any conflict between this policy and any requirements imposed by the federal or state as a condition or receipt of federal or state funds, the federal or state requirements shall prevail.

Each department head shall assign a person to be the Department DBE Program Coordinator. Each department head has primary responsibility for the goals stated herein and the designated Department DBE Program Coordinator will have responsibility:

- To Receive functional supervision from the DBE Liaison Officer;
- Ensure that the applicable DBE Subcontractors Bidder’s Packet is included in requests for proposals or bid packets prior to letting them out to bid or sending the proposals out;
- Attend Department pre-bid meetings to inform potential contractors and subcontractors of the scope and requirements of the DBE Program;
- Review bid documents, proposals and contracts to assure compliance with County DBE Program policies and regulations;
- Approve all responsive bidders as it relates to DBE Program policies, regulations and Good Faith Effort Evaluations;
- Identify non-responsive or non-responsible bidders;
- Serve as a liaison between the Office of Small Business Development and the department staff and/or contractors regarding the availability of DBE resources and the DBE Program in general;
- Attend quarterly Department DBE Program Coordinator meetings;
- Develop, complete and submit monthly reports to the DBE Liaison Officer;

- Assist the DBE Liaison Officer, County Counsel or other County agency in obtaining information regarding RFPs, contracts, Good Faith Effort evaluations, DBE Program data, etc., that may be needed to resolve a dispute or clarify actions taken by the department or contractor; and
- Assist in the periodic DBE Program monitoring review conducted by the DBE Liaison Officer.

Departments, offices, agencies and Board-governed Special Districts will maximize the opportunity for DBE businesses to compete for all County contracts which involve the receipt of federal funds.

The Department of Economic and Community Development, through the County Office of Small Business Development, shall be responsible:

- To review directly or through authorized department coordinators all County contracts which involve the receipt of federal funds to assure compliance with this policy prior to Board of Supervisors' submission.
- To develop and maintain County-wide procedures to assure the proper implementation of County Policy 15-02.
- To annually report to the County Administrative Officer in writing on the following information:
 - a. To provide data to the CAO to make recommendations to the Board of Supervisors.
 - b. To provide an analysis of the data presented to the CAO in written format on an annual basis.
 - c. To provide recommendations to the CAO as to the strengths and weaknesses of the previous year's program activity.
 - d. To provide recommended actions to continually improve the quality of the program.
 - e. To ensure that the Director of the County Office of Small Business Development shall work in conjunction with the appropriate County Departments to establish specific goals and objectives for contracting of work or procurement for DBE businesses.

The County of San Bernardino has disseminated this policy statement to the County of San Bernardino Board of Supervisors and all the departments within the County. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

III. Nondiscrimination (§26.7)

The County of San Bernardino will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by Title 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the County of San Bernardino will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

IV. DBE Program Updates (§26.21)

The County of San Bernardino will continue to carry out this Program until we have established a new goal setting methodology or until significant changes to this DBE Program are adopted. The County of San Bernardino will provide to Caltrans a proposed overall annual goal and goal setting methodology and other program updates by June 1 of every year.

V. Quotas (§26.43)

The County of San Bernardino will not use quotas or set-asides in any way in the administration of this DBE Program.

VI. DBE Liaison Officer (DBELO) (§26.45)

The County of San Bernardino has designated the following individual as the DBE Liaison Officer:

Mr. Wesley B. Jefferson, Director
Office of Small Business Development
County of San Bernardino
825 E. Third Street, Suite 201, San Bernardino, CA 92415-0838
Telephone: (909) 387-8278
E-Mail: wjefferson@ecd.co.san-bernardino.ca.us

In this capacity, Mr. Jefferson is responsible for implementing all aspects of the DBE Program and ensuring that the County of San Bernardino complies with all provisions of Title 49 CFR Part 26; *“Participation by Disadvantaged Business Enterprise Regulations in Department of Transportation Financial Assistance Programs”*. This is available on the Internet at osdbuweb.dot.gov/main.cfm. Mr. Jefferson has direct, independent access to the County Administrative Officer concerning DBE Program matters. The DBELO has two (2) support personnel who devote a portion of their time to the Program. An organization chart displaying the DBELO’s position in the organization is found in Attachment B to this Program.

The DBE Liaison Officer is responsible for developing, implementing and monitoring the DBE Program, in coordination with Department DBE Coordinators. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this Program.
3. Works with all departments to set overall annual goals for DBE participation in DOT-assisted contracts.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements to ensure DBE goals are included in solicitations when warranted (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the County of San Bernardino's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of DOT contracting opportunities.
13. Develops and maintains a Bidders List of DBE and non-DBE firms bidding on DOT-assisted projects.
14. Review the findings of fact made by Department DBE Program Coordinators;
15. Ensure that Department DBE Program Coordinators submit monthly reports by the tenth of each month in accordance the internal reporting requirements section;
16. Take immediate and appropriate action upon learning of DBE contractor, vendor, bidder and proposer protests, disputes and complaints;
17. Conduct, schedule and coordinate Department DBE Program Coordinator quarterly meetings;
18. Develop and maintain monthly, quarterly, year-to-date and annual Program reports;
19. Provide direct communication and coordination with departments for the prompt processing of contracts, agreements and purchase orders;
20. Review and audit individual departments on a quarterly basis to verify compliance with policy;
21. Ensure that all DBEs obtain a County registration number.

VII. Federal Financial Assistance Agreement Assurance (§26.13)

The County of San Bernardino will sign the following assurance, applicable to all FHWA and/or FAA-assisted contracts and their administration as part of the program supplement agreement for each project:

"The County of San Bernardino shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The County of San Bernardino shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The County of San Bernardino's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of San Bernardino of its failure to carry out its approved Program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

VIII. DBE Financial Institutions

It is the policy of the County of San Bernardino to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer. The Caltrans Disadvantaged Business Enterprise Program may offer assistance to the DBE Liaison Officer.

IX. DBE Directory (§26.31)

The Office of Small Business Development shall maintain a directory of CalTrans registered Disadvantaged Business Enterprises (DBEs) and shall make the directory available to departments and prime contractors to facilitate the identification of CalTrans registered DBEs whose skills are needed in the performance of County contracts, subject to this standard procedure.

The County of San Bernardino will also refer interested persons to the DBE directory available from the Caltrans Disadvantaged Business Enterprise Program website at www.dot.ca.gov/hq/bep.

X. Overconcentration (§26.33)

The County of San Bernardino has not identified any types of work in DOT-assisted contracts that have an overconcentration of DBE participation. If in the future, the County of San Bernardino identifies the need to address overconcentration, measures for addressing overconcentration will be submitted to CalTrans, the District Local Assistance Engineers (DLAE) for approval.

XI. Outreach and Business Development Programs (§26.35)

The County of San Bernardino does not have a business development or Mentor-Protégé Program. If the County of San Bernardino identifies the need for such a program in the future, the rationale for adopting such a program and a comprehensive description of it will be submitted to the DLAE for approval.

In the interim, the County's Office of Small Business Development shall take the leadership in developing outreach methods and techniques to assure increased participation of DBEs in the County's federal-aid projects of needed goods and services, including professional services contracts. The Office will, to the extent possible, provide technical assistance and referral of DBEs for management and business development services, such as: financing, bonds, insurance, bid estimating, planning, joint venturing, etc.

Outreach activities to the business community include, but are not limited to:

- a. workshops, seminars, business trade shows, conferences, etc.;
- b. networking with culturally diverse, and women business organizations, such as: African American Chambers of Commerce; Asian Business Association; Minority Business Association (MBA); Hispanic Chambers of Commerce; National Association of Minority Contractors; Southern California Purchasing Council; Women Construction Owners and Executives; Minority Business Development Centers; SBA, etc.;
- c. newsletters;
- d. press releases to DBE focus newspapers;
- e. radio and television interview programs;
- f. speaking engagements to civic, business and professional organizations;
- g. planning and conducting an annual contracting opportunities conference;
- h. encouraging and training County departmental staff to participate in activities that foster a greater awareness of contracting opportunities in their respective departments; and

- i. encouraging participation of DBEs in pre-bid meetings for networking with prime contractors and County staff.

In addition, the County will take measures to encourage DBEs to bid on County federal-aid contracts and to overcome any unwillingness of non-DBEs to participate in a significant way with DBEs, as follows:

- a. During the planning phase, departments should design the project or purchase into units sized to permit participation by DBEs, where consistent with Public Contracts Code Section 20123.5.
- b. Establish delivery and payment schedules in construction contracts which will facilitate participation by DBEs.
- c. To the extent practicable, include the department's estimated cost range of the construction work in construction contract documents.
- d. County departments involved in federal-aid construction contracts shall take affirmative steps to maximize DBE participation. Affirmative steps shall include the following:
 - 1. Include DBEs on lists of prospective bidders and consultants and assure that DBEs are solicited.
 - 2. For those contracts requiring County approval of subcontracts, if any subcontracts are to be awarded, to the extent allowed by law, require the prime contractor to divide the project or purchase in to smaller tasks or quantities to permit maximum DBE participation and establish delivery and payment schedules which will facilitate DBE participation.

XII. Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

The County of San Bernardino ensures that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.”

Prompt Payment

The County of San Bernardino ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

Satisfactory Performance

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from the County of San Bernardino. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of San Bernardino. This clause applies to both DBE and non-DBE subcontractors.

Release of Retainage

The prime contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County of San Bernardino. This clause applies to both DBE and non-DBE subcontractors.

Ongoing Compliance Monitoring

It is the responsibility of the prime contractor to provide evidence of all subcontractor payments in accordance with the above stated Prompt Payment Provisions. The prime contractor shall provide access to such records at the request of the County of San Bernardino. Therefore, all County contracts, agreements, and purchase orders shall contain the following clause:

"The Contractor agrees that County has the right to review, obtain and copy all records pertaining to performance of the contract. The Contractor agrees to provide County with any relevant information requested and shall permit County access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The Contractor shall maintain records for a period of at least three (3) years after final payment under the contract."

The County of San Bernardino will conduct periodic reviews as necessary to ensure full compliance.

XIII. Monitoring and Enforcement Mechanisms (§26.37)

The DBE Liaison Officer in coordination with Department DBE Coordinators shall periodically monitor each department's activities. Periodic monitoring reviews shall be conducted and monitoring reports written as to findings and recommendations as it relates to compliance with County policies.

Written monitoring reports shall be periodically given to the Chief Administrative Officer for presentation to the County Board of Supervisors showing results and recommendations. The County of San Bernardino will assign a Resident Engineer (RE) or Contract Manager to monitor and track actual DBE participation through contractor and subcontractor reports of payments in accordance with the following:

Monitoring Audits

Internal departmental monitoring audits will be conducted to assure that a comprehensive determination is made as to whether:

- a. Existing plans, policies and procedures are being carried out;
- b. Such plans, policies and procedures are functioning effectively and efficiently; and
- c. The Chief Administrative Officer is kept informed as to important facts and events within County organization.

Monitoring Audit Procedures

The following procedures shall be used in conducting DBE Program monitoring audits:

- a. Findings are to be reported objectively and factually without resorting to speculation or managerial determinations which require further analysis.
- b. Monitoring audits will be conducted as scheduled and announced by the DBE Liaison Officer.
- c. Monitoring audits shall be filed as required by law, for internal audit reports, with copies to the Chief Administrative Officer, Assistant Administrative Officer and department head concerned.
- d. The department head concerned shall respond to any findings and recommendations made in the Monitoring Audit Report by filing a reply within thirty (30) days following receipt of the report. The reply shall be forwarded to the Chief Administrative Officer through the appropriate Assistant Administrative Office, if applicable, with a copy to the DBE Liaison Officer. If no findings and/or recommendations are made in the Monitoring Audit Report, no reply is required.

After Contract Award

After the contract award, the County of San Bernardino will review the award documents for the portion of items each DBE and first tier subcontractor (an immediate contractor) will be performing and the dollar value of that work. With these documents the RE/Contract Manager will be able to determine the work to be performed by the DBEs or subcontractors listed.

Pre-construction Conference

A pre-construction conference will be scheduled between the RE and the prime contractor or their representative to discuss the work each DBE subcontractor will perform.

Before work can begin on a subcontract, the County of San Bernardino will require the contractor to submit a completed “Subcontracting Request,” Exhibit 16-B of Caltrans’ Local Assistance Program Manual (LAPM) or equivalent. When the RE receives the completed form it will be checked for agreement of the first tier subcontractors and DBEs to ensure DBE goal commitment are followed. The RE will not approve the request when it identifies someone other than the DBE or first tier subcontractor listed in the previously completed “Local Agency Bidder DBE Information,” Exhibit 15-G of Caltrans’ LAPM. The “Subcontracting Request” will not be approved until all discrepancies are resolved. If an issue cannot be resolved at that time, or there is some other concern, the RE will require the contractor to eliminate the subcontractor in question before signing the subcontracting request. A change in the DBE or first tier subcontractor may be addressed during a substitution process at a later date.

Suppliers, vendors, or manufacturers listed on the “Bidder DBE Information” will be compared to those listed in the completed Exhibit 16-I of Caltrans’ LAPM or equivalent. Differences must be resolved by either making corrections or requesting a substitution.

The RE will give the contractor a blank “Final Report Utilization of Disadvantaged Business Enterprises, First Tier Subcontractors”, Exhibit 17-F of Caltrans’ LAPM, and will explain to them that the document will be required at the end of the project, for which payment can be withheld, in conformance with the contract.

Construction Contract Monitoring

The RE will ensure that the RE’s staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations.

When a firm other than the listed DBE subcontractor is found performing the work, the RE will notify the contractor of the apparent discrepancy and potential loss of payment. Based on the contractor’s response, the RE will take appropriate action: The DBE Liaison Officer will perform a preliminary investigation to identify any potential issues related to the DBE subcontractor performing a commercially useful function. Any substantive issues will be forwarded to the Caltrans Disadvantaged Business Enterprise Program. If the contractor fails to adequately explain why there is a discrepancy, payment for the work will be withheld and a letter will be sent to the contractor referencing the applicable specification violation and the required withholding of payment.

If the contract requires the submittal of a monthly trucking document, the contractor will be required to submit documentation to the RE showing the owner’s name; California Highway Patrol CA number; and the DBE certification number of the owner of the truck for each truck used during that month for which DBE participation will be claimed. The trucks will be listed by

California Highway Patrol CA number in the daily diary or on a separate piece of paper for documentation. The numbers are checked by inspectors regularly to confirm compliance.

Substitution

Substitutions will be subject to the Subletting and Subcontracting Fair Practices Act (California Public Contracts Code sections 4100 et.seq. - The "Act"). Contractors must adhere to the provisions of the Act which require the contractor to list all subcontractors in excess of one half of one percent (0.5%) of the contractor's total bid or \$10,000, whichever is greater. The statutes are designed to prevent bid shopping by contractors. The Act explains that a contractor may not substitute a subcontractor listed in the original bid except with the approval of the awarding authority under certain circumstances.

- A. If awarded the contract, the successful bidder/proposer must use the DBE subcontractors and/or suppliers proposed in its final bid/proposal unless bidder/proposer requests and receives written permission from County for substitution.
- B. When a DBE substitution is requested, the RE/Contract Manager will request a letter from the contractor explaining why substitution is needed.
- C. At a minimum, the request must include: (1) a written explanation of the reason for the substitution; (2) the identity of the proposed person or firm to be substituted; and (3) satisfactory evidence that DBE participation goals certified in the original proposal will still be met after the substitution.
- D. The RE/Contract Manager must review the letter to be sure names and addresses are shown, dollar values are included, and reason for the request is explained. If the RE/Contract Manager agrees to the substitution and with concurrence of the substitution of the DBE Liaison Officer, the RE/Contract Manager will notify, in writing, the DBE subcontractor regarding the proposed substitution and procedure for written objection from the DBE subcontractor in accordance with the Subletting and Subcontracting Fair Practices Act. If the contractor is not meeting the contract goal with this substitution, the contractor must provide the required good faith effort to the RE/Contract Manager for local agency consideration. If there is any doubt in the RE/Contract Manager's mind regarding the requested substitution, the RE/Contract Manager may contact the DLAE for assistance and direction.
- E. County's approval or disapproval of a substitution request should not be construed as an excuse for non-compliance with any other provision of law including, but not limited to, the Act or any other contract requirements relating to substitution of subcontractors.
- F. Failure to adhere to DBE participation proposed by the successful bidder/proposer may be cause for contract termination and recovery of damages under the rights and remedies due County in the default section of the contract.

Record Keeping and Final Report Utilization of Disadvantaged Business Enterprises

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company.
2. The date of payment and the total dollar figure paid to each of the firms.
3. The DBE prime contractor shall also show the date of work performed by their own forces along with the corresponding dollar value of the work claimed toward DBE goals.

When a contract has been completed the contractor will provide a summary of the records stated above. The DBE utilization information will be documented on Exhibit 17-F of Caltrans' LAPM and will be submitted to the DLAE attached to the Report of Expenditures. The RE will compare the completed Exhibit 17-F of Caltrans' LAPM to the contractor's completed Exhibit 15-G of Caltrans' LAPM and, if applicable, to the completed Exhibit 16-B of Caltrans' LAPM. The DBEs shown on the completed Exhibit 17-F of Caltrans' LAPM should be the same as those originally listed unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The dollar amount should reflect any changes made in planned work done by the DBE. The contractor will be required to explain in writing why the names of the subcontractors, the work items or dollar figures are different from what was originally shown on the completed Exhibit 15-G of Caltrans' LAPM when:

- There have been no changes made by the RE.
- The contractor has not provided a sufficient explanation in the comments section of the completed Exhibit 17-F of Caltrans' LAPM.

The explanation will be attached to the completed Exhibit 17-F for submittal. The RE will file this in the project records.

The County of San Bernardino's DBE Liaison Officer will keep track of the DBE certification status on the Internet at www.dot.ca.gov/hq/bep and keep the RE informed of changes that affect the contract. The RE will require the contractor to act in accordance with existing contractual commitments regardless of decertification.

The DLAE will use the Plans, Specifications and Engineering (PS&E) checklist to monitor County of San Bernardino's commitment to require bidders list information to be submitted to the County of San Bernardino from the awarded prime and subcontractors as a means to develop a bidders list. This monitoring will only take place if the bidders list information is required to be submitted as stipulated in the special provisions.

The County of San Bernardino will bring to the attention of the DOT through the DLAE any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. The County of San Bernardino also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

XIV. Overall Goals (\$26.45)

Amount of Goal

The Overall Annual DBE Goals for the County of San Bernardino's DOT-assisted for Federal Fiscal year (FFY) 2000/2001 are the following: **14% of the total amount of the federal funds awarded by the County for FHWA construction programs**, and **12% of the total amount of the federal funds awarded by the County for FAA construction programs**. The County of San Bernardino projects to meet **4%** and **2%** respectively, of these goals utilizing race-neutral methods. The County of San Bernardino projects to meet the remaining **10%** of these goals utilizing race-conscious measures.

Methodology

Projecting Federal Assisted Contract Awards/Expenditures for Federal Fiscal Year

In conjunction with the preparation and adoption of the budget for each fiscal year, the DBE Liaison Officer, in consultation with the appropriate divisions and departments responsible for contracting activities, will conduct a thorough analysis of the projected number, types of work by industry disciplines and dollar amounts of contracting opportunities that will be funded, in whole or in part, by DOT federal financial assistance for that year.

STEP 1: Establishing a Base Figure

Once the County of San Bernardino defines its DOT-assisted contracting program and relevant market areas for the fiscal year, the County of San Bernardino will establish a *Base Figure* following one of the methodologies outlined in Title 49 CFR Part 26 and Caltrans' Local Assistance Procedures Manual.

To establish the Base Figure of the relative availability of DBEs for both the County's projected FFY 2000/01 FHWA and FAA-assisted contracting programs, the County of San Bernardino utilized data from the Caltrans on-line Bulletin Board System (BBS) DBE Directory of Certified Firms for the specified work categories, as its numerators (filtered to include all DBE firms within the geographic market area). In addition, as its denominators, the County utilized data from the 1998 U.S. Census Bureau County Business Patterns (CBP) database, to determine all available firms within the following work industries, within the relevant market area, (which consists of County of San Bernardino):

Categories: Electrical Work, Highway & Street Construction, Other Special Trade Contractors and Grading & Paving Work

The County of San Bernardino further weighted the resultant figure based on the amount of DOT-federal assistance the County of San Bernardino is projected to award and/or expend on various industries in establishing the Base Figure.

Please refer to Appendix E for the County of San Bernardino's Overall Annual Goal Analysis for FFY 2000/2001.

STEP 2: Adjusting the Base Figure

As a mandatory second step, the County of San Bernardino will survey other relevant market data to consider adjusting the Base Figure established. Indicators that County of San Bernardino may determine to be relevant to its market, may include, but not be limited to:

1. Demonstrated evidence of DBE capacity to perform work in the County of San Bernardino's federally assisted and non-federally assisted contracting program;
2. The number, types and dollar value of contracting opportunities projected to be financed with federal funds and to be awarded during the federal fiscal year.
3. The County of San Bernardino's Bidders List.
4. Other local agencies in our geographic area goal results in similar contracting opportunities and markets, and the reasons for the level of those results.
5. The methods used by the County of San Bernardino to increase DBE participation in federally assisted contracts.
6. The demographics and business activity of the geographical area in which the County of San Bernardino will solicit bids or proposals.
7. The data from statistical disparities of DBEs to obtain financing, bonding and insurance requirements.
8. The data on employment and self-employment, education and training programs, to the extent the County of San Bernardino can relate it to the opportunities for DBEs to perform in the County of San Bernardino's DBE Program.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The County of San Bernardino shall achieve the overall annual goals for DBE participation through a combination of race-neutral and race-conscious measures including the use of contract-specific goals as needed to meet its overall annual DBE goal.

Race-Neutral Measures

The County of San Bernardino intends to use race-neutral measures to the extent feasible to achieve its overall annual goal. The County of San Bernardino will use the following race-neutral measures as appropriate to facilitate DBE and other small business participation in the County of San Bernardino's contracting program:

- (a) Configuring large contracts into smaller contracts when feasible, which would make contracts more accessible to small businesses, and would not impose significant additional cost, delay or risk to the County of San Bernardino;

- (b) Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids;
- (c) Assisting in overcoming limitations in bonding and financing;
- (d) Providing technical assistance in orienting small businesses to public contracting procedures, use of the Internet, and facilitating introductions to the County of San Bernardino' and other U.S. DOT recipients' contracting activities; and
- (e) Providing outreach and communications programs on contract procedures and contract opportunities to ensure the inclusion of DBEs and other small businesses.

Race-Conscious Measures Goals (section 26.51)

The County of San Bernardino will annually consider various factors to project levels of DBE participation to be met through race-conscious measures and will use race-conscious measures such as contract-specific goals to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures. On all contracts for which race-conscious measures are used, the County will include the "Subcontractor's Packet" to be utilized by the bidders on the affected project. The County of San Bernardino shall monitor and adjust the estimated utilization of race-neutral and race-conscious measures as required in accordance with regulatory guidelines.

Process

For subsequent years, the following procedures will be followed:

The County of San Bernardino will submit its overall annual DBE goal to Caltrans by June 1 of each year. The goal submission includes the amount of overall goal, the method utilized to calculate the goal and the estimated race-neutral and race-conscious participation projections.

Once the DLAE has responded with preliminary comments, and, the comments have been incorporated into the draft overall goal analysis, the County of San Bernardino will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the County of San Bernardino's principal office for 30 days from the date of the notice, and informing the public that the County of San Bernardino will accept comments relative to the goal analysis for 45 days following the date of the notice. Advertisements in newspapers, minority focus media, trade publications, and websites will be the normal media to accomplish this effort. The notice will include addresses to where comments may be sent and addresses (including offices and websites) where the proposed goal and rationale may be reviewed.

The overall final goal resubmission to the Caltrans DLAE, will include a summary of information and comments received during this public participation process, including the County of San Bernardino's responses and a determination on the impact the public comments had on the overall goal, if any. This will be due by September 1 to the Caltrans DLAE. The

DLAE will have a month to perform a final review enabling the County of San Bernardino to implement the new overall annual goal by October 1 of each year.

XV. Contract Goals (§26.51)

The County of San Bernardino will use contract goals to meet any portion of the overall goal County of San Bernardino does not project being able to meet by the use of race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The contract work items will be compared with eligible DBE contractors willing to work on the project. A determination will also be made to decide which items are likely to be performed by the prime contractor and which ones are likely to be performed by the subcontractor(s). The goal will then be incorporated into the contract documents. Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

Situations may arise where it is not practicable to apply the DBE Program. If such a situation arises, the Department DBE Program Coordinator may make a finding based upon the existing facts, that it is not practicable to apply the DBE program. The DBE Liaison Officer must review the finding of fact. The finding must be presented in the form of a recommendation to the County Board of Supervisors that because of the unique or special circumstances of the specified situation, the DBE program will not be applicable. Some situations may be but are not limited to, sole source products/services, emergency requisitions or situations where church-related organizations or other public entities are proposing to provide services.

XVI. Transit Vehicle Manufacturers (§26.49)

If DOT-assisted contracts will include transit vehicle procurements, the County of San Bernardino will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49. The County of San Bernardino will direct the transit vehicle manufacturer to the subject requirements located on the Internet at <http://osdbuweb.dot.gov/programs/dbe/dbe.htm>.

XVII. Good Faith Efforts (§26.53)

Information to be Submitted

The County of San Bernardino treats bidders'/offerors' compliance with good faith effort requirements as a matter of responsiveness. A responsive proposal meets all the requirements of the advertisement and solicitation. Bidders/Proposers must assist the County in implementing this policy by taking all reasonable steps to ensure that all qualified business enterprises including DBEs have an equal opportunity to compete for and participate in County federal-aid construction contracts. A Bidders/Proposers good faith efforts to reach out to DBEs will be determined from written documentation of the level of effort put into obtaining DBE participation, including all forms included in the DBE Subcontractor Bidder's Packet: DBE Good Faith Effort Affidavit; Bidder's DBE Certification Form; DBE Subcontractor's Listing Form. Failure to meet expected DBE participation level will not by itself be the basis for disqualification or determination of non-compliance with this policy. However, adequacy of a bidder's good faith effort will be determined by the County after consideration of the indicators of good faith

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information to: County of San Bernardino, Office of Small Business Development, 825 E. Third St., Suite 201, San Bernardino, CA 92415-0838, or address designated, no later than 4:00 p.m. on or before the fourth day, not including Saturdays, Sundays and legal holidays, following bid opening:

1. The names and addresses of known DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26, which is attached.

When applicable, bidders/proposers failing to meet the goals or make the Good Faith Effort will be considered non-responsive and ineligible for contract award. After review of the facts resulting in a recommendation to reject a bidder/proposer as non-responsive pursuant to this provision, the DBE Liaison Officer or designated representative (Department DBE Program Coordinator) shall provide written determination of bidder's/proposer's non-responsiveness. Any protest or appeal regarding this decision shall be made in accordance with subparagraph 14 of this section.

Bidders/Proposers making misrepresentations, false claims, intentionally making an untrue statement or violating any policy or regulation of County DBE Program criteria, shall not be allowed to bid or make proposal on any future County contracts for a period of two (2) years and shall be taken off the County's bidder's list.

The following personnel is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: DBE Liaison Officer

The County of San Bernardino will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

Administrative Reconsideration

All protests regarding determination of non-responsiveness and/or bid rejections shall be reviewed by the Department DBE Program Coordinator. If that individual affirms the determination and/or rejection, an appeal may be made to the DBE Liaison Officer. If the DBE Liaison Officer concurs with the determination and/or rejection, an appeal may be made to the County Board or its designee.

Within 10 days of being informed by the County of San Bernardino that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the Reconsideration Official or designee.

Mr. Baxter J. Williams
Deputy Director
County of San Bernardino Economic and Community Development Department
290 North "D" Street, 6th Floor
San Bernardino, CA 92415-0040
Telephone: (909) 388-0800

The Reconsideration Official or designee will not have played any role in the original determination that the bidder/offeror did not make document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the Reconsideration Official or designee to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The County of San Bernardino will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to Caltrans, FHWA or the DOT.

XVIII. Counting DBE Participation (§26.55)

The County of San Bernardino will count DBE participation toward overall and contract goals as provided in the contract specifications for the prime contractor, subcontractor, joint venture partner with prime or subcontractor, or vendor of material or supplies. See Caltrans' Sample Boiler Plate Contract Documents previously mentioned. Also, refer to XIII: "*After Contract Award.*"

XIX. Certification (§26.83(a))

The County of San Bernardino ensures that only DBE firms currently certified on the Caltrans' directory will participate as DBEs in our Program. All certified MBEs, WBEs and DBEs must submit a copy of their approved certification letter and complete the County's registration application to receive an assigned County registration number.

All MBEs, WBEs and/or DBEs participating in any County contract, agreement or purchase order must have an assigned County registration number.

XX. Information Collection and Reporting

Bidders List and DBE Subcontractors Bidder's Packet

The County of San Bernardino will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/non-DBE status, age of firm, type of work provided by firm and annual gross receipts of firms.

The County of San Bernardino has incorporated a Bidders List form, identified as Appendix C, and the DBE Subcontractors Bidder's Packet, identified as Appendix D into the County of San Bernardino's solicitation documents, which requires that bidders/offerors provide all required information.

Monitoring Payments to DBEs

Prime contractors are required to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County of San Bernardino, Caltrans, FHWA, FAA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Payments to DBE subcontractors will be reviewed by the County of San Bernardino to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Internal Reporting Requirements

Each County department subject to Policy 15-02, as amended, and this Procedures Manual, shall report to the DBE Liaison Officer on a monthly basis.

The following two reports must be completed by each department monthly:

a. Prime Contractors Award Monthly Report -

All departmental contracts, agreements, equipment purchases, material purchases and purchase orders awarded, as per County Policy No. 15-02 and 15-02SP, shall be reported to the DBE Liaison Officer by the tenth (10th) of each month stating award date, contractor's name, registration number, contract number and award amount.

b. Subcontractor Monthly Report -

All departmental contracts, agreements, equipment purchases, material purchases, purchase order awards shall be reported to the DBE Liaison Officer by the tenth (10th) of each month stating award date, contractor's name, registration number, contract number, and subcontract amount.

Reporting to Caltrans

Quarterly Reports shall be given to the County Administrative Officer with comments and recommendations from the Disadvantaged Business Enterprise.

The County of San Bernardino will report final utilization of DBE participation to the DLAE using Exhibit 17-F of the Caltrans' LAPM.

Confidentiality

The County of San Bernardino will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws.

William Randolph
Chief Administrative Officer
County of San Bernardino

Date: _____

This Disadvantaged Business Enterprise Program is accepted by:

Signature of DLAE

Date: _____

<p>APPENDIX A TO PART 26</p> <p>GUIDANCE CONCERNING GOOD FAITH EFFORTS</p>
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- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this Part, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

- II. In any situation in which you have established a contract goal, 49 CFR part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
 - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

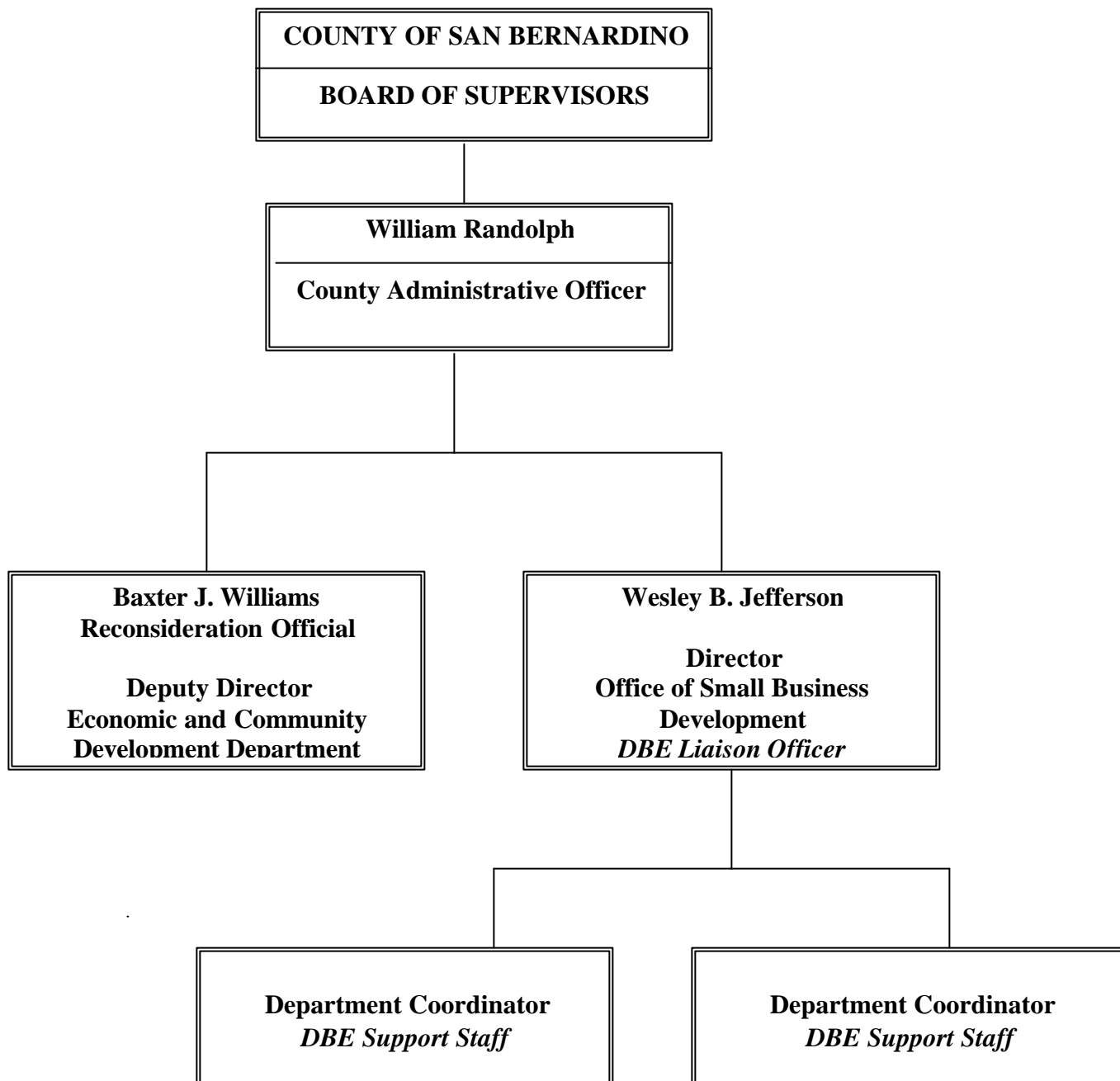
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.



COUNTY OF SAN BERNARDINO DBE PROGRAM ORGANIZATIONAL CHART





COUNTY OF SAN BERNARDINO

BIDDERS LIST

All bidders/proposers are required to provide the following information for all DBE and non-DBE contractors, who provided a proposal, bid, quote, or were contacted by the proposed prime. This information is also required from the proposed prime contractor, and must be submitted with their bid/proposal. The County of San Bernardino will use this information to maintain and update a Bidders List to assist in the overall annual goal DBE goal setting process.

Firm Name: _____ Phone: _____

Address: _____ Fax: _____

Contact Person: _____ No. of Years in Business: _____

Is the firm currently certified as DBE under the new regulations (49 CFR Part 26)? ☐ YES ☐ NO

Type of work/services/materials provided by firm: _____

What was your firm's Gross Annual receipts for last year?

_____ Less than \$1 Million
 _____ Less than \$5 Million
 _____ Less than \$10 Million
 _____ Less than \$15 Million
 _____ More than \$15 Million

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.